



Control Number: 44463



Item Number: 28

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SOAH DOCKET NO. 473-15-2671.WS
PUC DOCKET NO. 44463

2015 APR 27 PM 4:29
PUBLIC UTILITY COMMISSION
FILING CLERK

PETITION OF BLUEBERRY HILLS WATER WORKS, LLC, APPEALING FROM THE DECISION OF THE CITY OF BEEVILLE TO CHANGE WHOLESALE WATER RATES	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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COMMISSION STAFF'S RESPONSE TO SOAH ORDER NO. 3

COMES NOW the Staff of the Public Utility Commission of Texas, representing the public interest and filing this Commission Staff's Response to Order No. 3.

I. Background

On February 18, 2015, Blueberry Hills Water Works, LLC (Blueberry) filed a petition appealing the City of Beeville's (Beeville) wholesale water rate and requesting interim water rates (Petition) pursuant to Texas Water Code § 13.043. The Petition challenges Beeville's decision affecting the amount to be paid for water service that was to be effective on January 1, 2015. The Commission has jurisdiction pursuant to Texas Water Code § 13.043.

On March 3, 2015, the Public Utility Commission of Texas referred this docket to the State Office of Administrative Hearings.

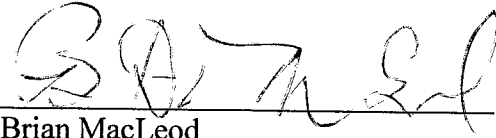
On March 31, 2015, the Beeville filed a Plea in Abatement. On April 10, 2015, Blueberry filed a response to the Plea in Abatement and a more detailed Motion for Interim Rates. On April 14, 2015, the Administrative Law Judge (ALJ) entered Order No. 3 granting the Plea in Abatement and establishing a procedural schedule for hearing arguments on Blueberry's motion for interim water rates. The order stated that a teleconference will be held on April 30, 2015, to consider oral arguments concerning interim rates. Order No. 3 further required the parties to file, by the close of business on April 27, 2015, documents that the parties would rely on in their oral arguments and a proposed order. Therefore, this filing is timely filed.

II. Documents to Be Relied on in Oral Argument and Proposed Drafts of Orders.

Staff intends to rely on documents filed by the other parties, and other than statutes and rules Staff intends to rely on one recent SOAH order in making its oral arguments at the

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on April 27, 2015, in accordance with P.U.C. Procedural Rule 22.74.



Brian MacLeod

prehearing conference scheduled for April 30, 2015. Staff has attached a copy of SOAH Order No. 8 in PUC Docket No. 43674 and SOAH Docket No. 473-15-1149.WS (Attachment A). In light of that order, if the ALJ is inclined to establish interim rates in this proceeding, the ceiling on interim rates (the proposed rates of \$4.00/1000 gallons with the base rates for the meter sizes and other charges described in Ordinance No. 2246) may be the appropriate interim rate.

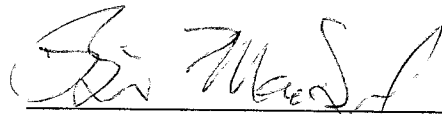
Because Staff has not yet established its position on interim rates, two draft orders are being submitted – one denying (Attachment B) and one granting interim rates at the rates currently charged (Attachment C). These drafts can be revised by Staff and provided after the interim rate hearing if requested to do so.

Dated: April 27, 2015

Respectfully Submitted,

Margaret Uhlig Pemberton
Division Director
Legal Division

Shelah J. Cisneros
Managing Attorney
Legal Division

A handwritten signature in black ink, appearing to read "Brian MacLeod", is written over a horizontal line.

Brian MacLeod-Legal Division
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Public Utility Commission of Texas
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Austin, Texas 78711-3326

SOAH DOCKET NO. 473-15-1149.WS
PUC DOCKET NO. 43674

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2015 APR -3 AM 9:29

PUBLIC UTILITY COMMISSION
FILED CLERK

PETITION OF THE CITY OF DALLAS
FOR REVIEW OF A DECISION BY
THE SABINE RIVER AUTHORITY

BEFORE THE STATE CLERK
OF

ADMINISTRATIVE HEARINGS

**SOAH ORDER NO. 8
ESTABLISHING INTERIM RATES**

On March 26, 2015, the Public Utility Commission of Texas (PUC or Commission) issued an order on appeal of State Office of Administrative Hearings (SOAH) Order No. 5. The PUC concluded that it and the Administrative Law Judge (ALJ), thorough referral, currently have authority to set interim rates in this case. Texas Water Code § 12.013(e). It also concluded that one of its rules provides for its setting interim rates in this case. 16 Tex. Admin. Code § 24.29(d). The PUC remanded this matter to the ALJ to give the ALJ an opportunity to consider whether interim rates should be established.

Using the process set out in 16 Texas Administrative Code § 24.29(d) and (e), the ALJ heard oral arguments from the parties on April 2, 2015, regarding whether an interim rate should be established. Under § 24.29(d),

[i]nterim rates may be established by the commission in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

The parties have entered into a water supply contract that addresses the amount the City of Dallas (Dallas) will pay Sabine River Authority (SRA) during the renewal term.¹ After negotiations broke down, SRA unilaterally began charging the current rate, \$0.5613 per 1,000 gallons, on a take-or-pay basis.

¹ Petition, ex. A at 21.

The Texas Constitution prohibits any law impairing the obligation of contracts.² Dallas filed a declaratory judgement action in Travis County District Court on January 30, 2015, seeking a determination that the rate set by SRA was not set pursuant to the contract. If the court finds SRA is charging a rate not set by contract, the PUC may set the rate. Tex. Water Code § 12.013. If the court finds that SRA is charging a rate set by contract, the PUC may change that rate after finding that the rate adversely affects the public interest. A Texas agency does not violate the constitutional limitation on contract impairment when it reviews rates under authority granted by the legislature if the agency first finds that the rates adversely affect the public interest by being unreasonably preferential, prejudicial, or discriminatory.³ Given the above legal complexities, the parties agree that resolution of their dispute could take several years.

With so many legal hurdles and unknowns ahead, the ALJ cannot reasonably, legally conclude at this preliminary stage that the rate SRA currently charges Dallas is unjust or unreasonable. Nor can he find that the rate imposes an unreasonably economic hardship on Dallas or its customers.

However, the ALJ finds that the current rate could result in Dallas paying an unjust and unreasonable rate because the PUC may ultimately set a lower rate. Importantly, setting an interim rate, even if it is the rate SRA currently is charging, allows the ALJ to order SRA to place rate collections into escrow during the interim, which will ensure that Dallas can be repaid if it is ultimately determined that Dallas was overcharged. 16 Tex. Admin. Code § 24.29(e)(3). Further, setting the rate SRA is charging as the interim rate and requiring escrow may encourage the parties to resolve their dispute. These factors lead the ALJ to conclude that he should set the rate SRA currently charges as the interim rate and require escrow.

Accordingly, the ALJ orders that the rate SRA currently charges Dallas will be the interim rate to be in effect until this case is finally decided, namely \$0.5613/1,000 gallons, on a take-or-pay basis. The interim rate is retroactively effective from November 2, 2014, when the

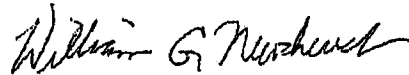
² Tex. Const. art. I, § 16.

³ See *Tex. Water Comm'n v. City of Fort Worth*, 875 S.W.2d 332, 336 (Tex. App. --Austin 1994; writ denied)

rate SRA is charging took effect. Tex. Water Code § 12.013(e) & (f). Further, Dallas' motion to require SRA to deposit all collections under the above rate since November 2, 2014, into an escrow account, in accordance with 16 Texas Administrative Code § 24.30, is granted.

The parties have stipulated that Dallas also pays SRA an undisputed service charge under the contract that is separate and apart from the above rate. The service charge is not subject to this interim-rate order or to escrow.

SIGNED April 2, 2015.



**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

**SOAH DOCKET NO. 473-15-2671.WS
PUC DOCKET NO. 44463**

PETITION OF BLUEBERRY HILLS WATER WORKS, LLC, APPEALING FROM THE DECISION OF THE CITY OF BEEVILLE TO CHANGE WHOLESALE WATER RATES	§ § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
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PROPOSED SOAH ORDER NO. 4 DENYING MOTION FOR INTERIM RATES

I. Background

On February 18, 2015, Blueberry Hills Water Works, LLC (Blueberry) filed a petition appealing the City of Beeville's (Beeville) wholesale water rate and requesting interim water rates (Petition) pursuant to Texas Water Code § 13.043. The Petition challenges Beeville's decision affecting the amount to be paid for water service that was to be effective on January 1, 2015. The Commission has jurisdiction pursuant to Texas Water Code § 13.043.

On March 3, 2015, the Public Utility Commission of Texas referred this docket to the State Office of Administrative Hearings.

On March 31, 2015, the Beeville filed a Plea in Abatement. On April 10, 2015, Blueberry filed a response to the Plea in Abatement and a more detailed Motion for Interim Rates. On April 14, 2015, the Administrative Law Judge (ALJ) entered Order No. 3 granting the Plea in Abatement and establishing a procedural schedule for hearing arguments on Blueberry's motion for interim water rates. That order required the parties to provide documents that the parties would rely on in this case and a proposed order by the close of business on April 27, 2015. Order No. 3 also set a teleconference hearing for oral argument on the interim rate motion for 10:00 a.m. on April 30, 2015.

On April 30, 2015, the ALJ held a telephonic hearing on Blueberry's interim rate motion. All parties appeared and made oral argument.

II. The Interim Rate Factors

Texas Water Code Ann. (TWC) § 13.043(f) is the statute that authorizes appeals of wholesale water rates when a retail public utility receives water service from another retail public utility. 16 Texas Administrative Code Ann. (TAC) § 24.29 specifies the factors for determining

Exhibit B

whether an interim rate may be established. 16 TAC § 24.29(d) provides that in cases under the Commission's original or appellate jurisdiction, interim rates may be established "where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in unreasonable economic hardship on the utility."

III. Conclusion

After considering the Pleadings on file and the oral argument of the parties, it is ordered that the Blueberry Hills' motion for Interim Rates is denied.

SIGNED April 30, 2015.

**STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SOAH DOCKET NO. 473-15-2671.WS
PUC DOCKET NO. 44463

PETITION OF BLUEBERRY HILLS	§	BEFORE THE STATE OFFICE
WATER WORKS, LLC, APPEALING	§	
FROM THE DECISION OF THE CITY	§	OF
OF BEEVILLE TO CHANGE	§	
WHOLESALE WATER RATES	§	ADMINISTRATIVE HEARINGS

PROPOSED SOAH ORDER NO. 4 ESTABLISHING INTERIM RATES

I. Background

On February 18, 2015, Blueberry Hills Water Works, LLC (Blueberry) filed a petition appealing the City of Beeville's (Beeville) wholesale water rate and requesting interim water rates (Petition) pursuant to Texas Water Code § 13.043. The Petition challenges Beeville's decision affecting the amount to be paid for water service that was to be effective on January 1, 2015. The Commission has jurisdiction over this proceeding pursuant to Texas Water Code § 13.043.

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utility. 16 Texas Administrative Code Ann. (TAC) § 24.29 specifies the factors for determining whether an interim rate may be established. 16 TAC § 24.29(d) provides that in cases under the Commission's original or appellate jurisdiction, interim rates may be established "where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in unreasonable economic hardship on the utility."

III. Conclusion

The ALJ cannot reasonably, legally conclude at this preliminary stage that the rate that the rate the City of Beeville currently charges Blueberry Hills is unjust or unreasonable. Nor can he find that the rate imposes an unreasonable economic hardship on Blueberry Hills or its customers.

However, the ALJ finds that the current rate could result in Blueberry paying an unjust and unreasonable rate because the PUC may ultimately set a lower rate. Importantly, setting an interim rate, even if it is the rate the City of Beeville currently is charging, allows the ALJ to order refunds if it is ultimately determined that Blueberry was overcharged. 16 TAC 24.29(h). These factors lead the ALJ to conclude that he should set the rate Beeville currently charges as the interim rate.

Accordingly, the ALJ orders that the rate the Beeville currently charges Blueberry will be the interim rate to be in effect until this case is finally decided, namely \$_____/gallons. The interim rate is retroactively effective from _____, when the rate the City of Beeville is charging took effect.

SIGNED April 30, 2015.

**STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**